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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14 JORDAN MARKS, individually and
15 on behalf of all others similarly
situated,

16 Plaintiff,

17 v.

18 CRUNCH SAN DIEGO, LLC,

19 Defendant.
20

Case No. 14-cv-348 BAS (BLM)

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

(ECF 58)

21 On October 23, 2014, the Court ruled on Defendant Crunch San Diego,
22 LLC's Motion for Summary Judgment, granting summary judgment against
23 Plaintiff Jordan Marks and dismissing the case with prejudice. ECF 55. Plaintiff
24 now moves for reconsideration of the Court's October 23, 2014 Order. ECF 58.

25 For the following reasons, the Court **DENIES** Plaintiff's motion.

26 **I. ANALYSIS**

27 Once judgment has been entered, reconsideration may be sought by filing a
28 motion under either Federal Rule of Civil Procedure 59(e) (motion to alter or

1 amend a judgment) or Federal Rule of Civil Procedure 60(b) (motion for relief
2 from judgment). *See Hinton v. Pac. Enter.*, 5 F.3d 391, 395 (9th Cir. 1993).

3 “Although Rule 59(e) permits a district court to reconsider and amend a
4 previous order, the rule offers an extraordinary remedy, to be used sparingly in the
5 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v.*
6 *Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks
7 omitted). “Reconsideration is appropriate if the district court (1) is presented with
8 newly discovered evidence, (2) committed clear error or the initial decision was
9 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch.*
10 *Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).
11 However, a motion for reconsideration may not be used to raise arguments or
12 present evidence for the first time when they could reasonably have been raised
13 earlier in the litigation. *Id.* It does not give parties a “second bite at the apple.” *See*
14 *id.* “[A]fter thoughts” or “shifting of ground” do not constitute an appropriate basis
15 for reconsideration. *Ausmus v. Lexington Ins. Co.*, No. 08-CV-2342-L, 2009 WL
16 2058549, at *2 (S.D. Cal. July 15, 2009) (Lorenz, J.).

17 Similarly, Rule 60(b) provides for extraordinary relief and may be invoked
18 only upon a showing of exceptional circumstances. *Engleson v. Burlington N.R.*
19 *Co.*, 972 F.2d 1038, 1044 (9th Cir.1994) (citing *Ben Sager Chem. Int’l v. E.*
20 *Targosz & Co.*, 560 F.2d 805, 809 (7th Cir. 1977)). Under Rule 60(b), the court
21 may grant reconsideration based on: (1) mistake, inadvertence, surprise or
22 excusable neglect; (2) newly discovered evidence which by due diligence could not
23 have been discovered before the court’s decision; (3) fraud by the adverse party;
24 (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other
25 reason justifying relief. Fed. R. Civ. P. 60(b). That last prong is “used sparingly as
26 an equitable remedy to prevent manifest injustice and is to be utilized only where
27 extraordinary circumstances prevented a party from taking timely action to prevent
28 or correct an erroneous judgment.” *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir.

1 2007).

2 Plaintiff's amended request for reconsideration is raised under Federal Rule
3 of Civil Procedure 59(e). However, Plaintiff provides no grounds for
4 reconsideration beyond asserting that the Court erred. As such, reconsideration is
5 clearly unwarranted. Accordingly, the motion for reconsideration is **DENIED**.

6 **II. CONCLUSION & ORDER**

7 Because Plaintiff fails to demonstrate entitlement to reconsideration, the
8 Court **DENIES** its motion in its entirety. ECF 58.

9 **IT IS SO ORDERED.**

10 Dated: November 20, 2014



Hon. Cynthia Bashant
United States District Judge